IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-6-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.17812 of 2006
M.P.Nos.1 and 2

K. Dakshinamoorthy ... Petitioner

Vs.

1. The Chief Engineer (General)
Tamil Nadu Highways Department,
Chepauk,
Chennai - 600 005.

2. The Superintending Engineer (Highways)
Villupuram Division,
Villupuram - 605 602. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records of the second respondent in Ref.No.8256/2005/Confdl, dated 27.4.2006 and quash the said charge memo dated 27.4.2006.

For Petitioner : Mr.K.Kannan

For Respondents : Mr.A.Arumugam, AGP,
assisted by
Mrs.C.K.Vishnupriya, GA.

O R D E R

By consent of both sides, the writ petition is taken up for final disposal in the admission stage itself.

2. In this writ petition, petitioner seeks to quash the charge memo dated 27.4.2006.

3. The brief facts necessary for disposal of the writ petition, as stated in the affidavit are as follows.

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(a) Petitioner was appointed as driver in the office of the Superintending Engineer (Highways), Villupuram, the second respondent herein, to drive the heavy goods vehicle. On 7.2.2000, when the petitioner was driving Lorry bearing registration No.TMO-3450 on Ulundurpet-Vridhachalam main road, near Seppalakurichi bus stand, a person by name N.Gunalan, who was working in the Highways & Rural Works department as Gang Mazdoor, travelled in the same lorry. He had been careless in not properly seating himself inside the lorry and he was smoking in the vehicle and in the course of the journey, due to the carelessness of Gunalan, he was thrown out of the lorry, who sustained grievous injuries and subsequently died on 13.2.2000.

(b) A criminal case was registered against the petitioner in C.C.No.28 of 2001 and the learned Judicial Magistrate, Vridhachalam, honourably acquitted the petitioner with a definite finding that the petitioner was not responsible for the fall and ultimate death of the said Gunalan. The findings of the Criminal Court is as follows,

> "... Thus, eventhough the prosecution examined as many as eleven witnesses on its side of whom eight were stated to be eye witnesses there is no pinch of evidence that incriminates the accused. In the above background the conclusion that the charge u/s 304-A IPC against the accused is not proved beyond all reasonable doubts is something inevitable. In the result, I hold the accused not guilty u/s 304-A IPC and acquit him u/s 255(1) Cr.P.C."

(c) The legal representatives of the Gunalan filed M.C.O.P.No.441 of 2002 and claimed compensation against the respondents, the District Collector and the Secretary of the Highways and Rural Works Department. Petitioner was arrayed as 5th respondent in the said claim petition. The respondents filed objections and contested the case on the ground that there had been no negligence on the part of the petitioner and the accident took place only on account of the carelessness of the deceased Gunalan. The translated version of the relevant portion in the counter affidavit filed by the respondents before the Tribunal reads thus,

> "Petitioners have to strictly prove the averments in the petition, except the one admitted by the respondents. The averment that at the time of occurrence, Gunalan, the brother of the petitioners, while on duty in the lorry belonging to the respondent, fell down from the lorry and sustained injuries due to sudden

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application of brake by the driver of the lorry and due to the said accident, the said Gunalan died, for which the petitioners claim Rs.5,00,000/- as compensation, are not true. The Office of the Assistant Divisional Engineer (H.R.W.D) is in Vridhachalam. The Government Highway to the distance of 261.790 Kms, within the jurisdiction of Vridhachalam Taluk, is under the control of this Office. In these roads, 49 road workers are working. In Vridhachalam-Ulundurpet highway, N.Gunalan, K.Anbalagan, P.Arokyaraj and K.Kannan are working. Lorry No.TMO-3450 belonging to the Government is under the control of this office. K.Dakshinamurthy is working as Driver of the lorry. At the time of occurrence, while the above four road workers were travelling in the lorry TMO-3450, unlike the other workers, who were properly seated behind the driver's seat, N.Gunalan was casually standing behind driver's cabin in the open space near the door and was smoking. At that time, because of suffocation due to smoke, he fell down. The lorry driver did not apply brake at that time. On hearing from the other workers, the driver stopped the lorry and took Gunalan to the Government Hospital, Vridhachalam for treatment. Thereafter, from 8.2.2000 to 13.2.2000 he took treatment in Government General Hospital, Chennai. In spite of treatment Gunalan died on 13.2.2000. The accident had not occurred due to the negligence of the lorry driver. Only due to the negligence of the deceased Gunalan, the accident occurred. ..."

(d) The Tribunal accepted the contentions of the respondents on the basis of the evidence placed before it and disallowed the claim in the petition and awarded minimum amount of Rs.50,000/- on strict liability principles of 'No Fault Liability' basis. The translation of the relevant portion of the findings of the Tribunal is as follows,

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"First Information Report has been marked as Ex.P-1 on the side of the petitioners. From the perusal of Ex.P-1, the Court finds that on 7.2.2000 at 17.00 hours the accident happened, but the complaint has been given on 10.2.2000; that the accident took place at the Seppalakurichi bus stand in Vridhachalam-Ulundurpet road; that the name of the

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complainant is Dakshinamoorthy; that Dakshinamoorthy, the driver of the lorry bearing registration No.TMO-3450 was the accused; and that, he is working in Highways department. The complainant Dakshinamoorthy has been shown as accused in the First Information Report. The details of the complaint form part of Ex.P-1. A perusal of that show that on 7.2.2000 at about 5.00 p.m. after completing highways work and while returning in the Vridhachalam-Ulundurpet road in lorry TMO 3450, the road workers M/s.Anbalagan, Arockiyaraj, Joseph, Gunalan and G.Kannan were sitting and when the lorry was proceeding near Seppalakurichi bus stand, Gunalan went to the backside of the lorry and due to his carelessness fell down and when enquired with others they said that Gunalan fell down only due to his negligence; that after first aid at Vridhachalam, for further treatment he was taken to Chennai Government Head Quarters Hospital; and that, as Gunalan was under treatment, there occurred delay in giving complaint. When analysed on the basis of Ex.P-1, this court could not find that the accident occurred due to the rash and negligence of fifth respondent/driver of the vehicle. ..."

The legal representatives of the deceased preferred an appeal in C.M.A.No.65 of 2004 on the file of this Court and the same is pending.

(e) According to the petitioner, he was due to retire on superannuation on 30.4.2006 and at that stage a charge memo was issued to him on 27.4.2006, the translated version of which reads as follows,

"(1) You, Thiru K.Dakshinamoorthy, Lorry Driver, on 7.2.2000 at about 5.00 p.m. in Ulundurpet-Vridhachalam road, near the bus stop of Seppalakurichi, applied sudden brake in the lorry, due to which, the passenger N.Gunalan fell down and died. Thus, you paved way for the legal representatives of the deceased N.Gunalan to claim compensation of Rs.5.00 lakhs by filing an appeal in the High Court of Madras in C.M.A.No.65 of 2004.

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(2) In view of your negligent act, you became responsible for the death of an individual and thereby you have violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973."

(f) The said charge memo is challenged in this writ petition on the ground that the criminal Court as well as the Motor Accident Claims Tribunal held that the petitioner is not responsible for the accident and the death of Gunalan occurred only due to his carelessness and therefore issuing the charge memo to the petitioner at this stage is contrary to the pleadings and findings of the Motor Accident Claims Tribunal and Criminal Court. According to the petitioner, the Criminal Court Judgment dated 13.8.001 has become final and therefore the petitioner cannot be served with charge memo for the very same allegations.

4. The learned counsel for the petitioner produced a judgment of this Court in W.P.No.27962 of 2005 dated 13.4.2006 (N.Munusamy v. The Inspector General of Police, CID (Intelligence, Madras and 2 others), wherein this Court relied on a judgment of the Division Bench of this Court in W.P.No.11002 of 1999 dated 7.7.1999. In the Division Bench decision it is observed that the Department's action seeking recovery of the amount awarded by the Motor Accident Claims Tribunal from the Driver of the vehicle, is wholly unsustainable, as the respondent as the employer, is duty bound in law to pay the compensation amount. It is further stated therein that the recovery proceedings made by the employer is misconceived and the said claim was rightly negatived by the Tamil Nadu Administrative Tribunal in O.A.No.6516 of 1996 by order dated 13.8.1998.

5. This Court in the light of the Division Bench decision referred above, in W.P.No.27962 of 2005 gave a direction to pay the terminal benefits like leave salary, special provident fund amount, DCRG, commutation amount, etc., to the petitioner, which were withheld. Since the petitioner is not responsible for the accident as found by the Criminal Court and by the Motor Accident Claims Tribunal and it is the specific stand taken by the respondents before the Tribunal, it is not open to the respondents to issue the impugned charge memo. The pendency of C.M.A.No.65 of 2004 cannot be a ground to issue the impugned charge memo because, even if the appeal is allowed, petitioner cannot be held personally responsible for payment of the amount as held by the Division Bench in its judgment dated 7.7.1999, referred above. In view of the said finding given by the Division Bench, which was also followed by me in my earlier order dated 13.4.2006 in W.P.No.27962 of 2005, the writ petitioner is entitled to succeed.

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6. In the result, the writ petition is allowed and the impugned charge memo dated 27.4.2006 is quashed. No costs. Connected miscellaneous petitions are closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Engineer (General),
Tamil Nadu Highways Department,
Chepauk, Chennai - 600 005.

2. The Superintending Engineer (Highways)
Villupuram Division, Villupuram - 605 602.

+ 1 cc to Mr. K. Kannan, Advocate SR No.28292

+ 1 cc to Government Pleader SR No.27995

GGK(CO)
SR/6.7.2006

Order in
W.P.No.17812 of 2006

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